

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ERIC PORTERFIELD, <i>Pro Se</i> ,	)	Case No.: 4:10 CV 340
	)	
Petitioner	)	JUDGE SOLOMON OLIVER, JR.
	)	
v.	)	
	)	
KEITH SMITH, WARDEN,	)	
	)	
Respondent	)	<u>ORDER</u>

On February 2, 2010, Petitioner Eric Porterfield, *Pro Se* (“Petitioner”), filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Petitioner has alleged ineffective assistance of appellate counsel for failing to raise: “‘Dead Bang Winners’ in the Error Assignments of 1.) Ineffective Assistance of Counsel, 2.) Manifest Weight of Evidence, 3.) Violation of Due Process, and 4.) Ineffective Assistance of Counsel/Defective Advise [sic].” (*Id.* at 4.) This case was referred to Magistrate Judge Kenneth McHargh for preparation of a report and recommendation. The Magistrate Judge issued his Report and Recommendation (“R&R”) on April 7, 2011, recommending that the Petition be denied. (ECF No. 23.) Specifically, the Magistrate Judge concluded that Petitioner’s ground for relief had been procedurally defaulted. (R & R at 14-17.) Petitioner failed to show cause as required by the Sixth Circuit in *Maupin v. Smith*, 285 F.2d

135, 138 (6th Cir. 1986).<sup>1</sup> (*Id.*) Since he had not demonstrated cause, the court did not need to consider the second part of the requirement put forth by *Maupin* of prejudice. (*Id.* at 18.) Without a showing of cause and prejudice to excuse a procedural default, the court cannot review the merits of the claim. (*Id.*) Therefore, Petitioner's claim of ineffective assistance of counsel has been procedurally defaulted.

Petitioner filed Objections to the R&R on May 11, 2011. (ECF No. 25.) The court finds his Objections not to be well-taken. The court finds that, after *de novo* review of the Report and Recommendation and all other relevant documents, the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, for the reasons stated by the Magistrate Judge, the court adopts as its own the Magistrate Judge's Report and Recommendation. (ECF No. 23.)

Consequently, Porterfield's Petition is hereby denied and final judgment is entered in favor of Respondent. The court further certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

May 26, 2011

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<sup>1</sup> Despite the court granting Petitioner an extension of time (ECF No. 22), he has not filed a Traverse.